

Amendment No. 1 to SB2327 Senate Finance, Ways, and Means Committee Amdt. No. 1

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by deleting SECTIONS 1 – 6 of the printed bill in their entireties and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding the following as a new chapter thereto:

4-____-101. Short title. This chapter shall be known and may be cited as the "Millennium Trust Fund Act of 2000."

4- -102. Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) "Authority" means the millennium financing authority created in §4-__-103;

(2) "Damage payments" means payments receivable by the state pursuant to the terms of the master settlement agreement;

(3) "Master settlement agreement" means the tobacco litigation settlement agreement entered into by Tennessee and certain other states, United States territories and possessions, and participating tobacco manufacturers, dated November 23, 1998;

(4) "Property sale contract" means any written instrument pursuant to which the state transfers the state's specific ownership

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interests in the right to receive damage payments to the authority in
exchange for cash payments and other adequate consideration;

(5) "State" means the State of Tennessee;

(6) "State funding board" means the board created in § 9-9-101;

and

(7) "Trust fund" means the Millennium Trust Fund created
pursuant to § 4-____-105.

4-____-103. Creation and composition of authority.

(a) There is hereby created the millennium financing authority. The authority shall be a body, politic and corporate, and an instrumentality of the state. The authority shall not be subject to administrative direction by any department, commission or agency of the state.

(b) Its membership shall consist of a board of trustees composed of five (5) members as follows:

- (1) The governor;
- (2) The state treasurer;
- (3) The secretary of state;
- (4) The commissioner of finance and administration; and
- (5) The comptroller of the treasury.

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(c) The members shall serve without salary, but each member shall be entitled to reimbursement for the member's actual and necessary expenses incurred in the performance of the member's official duties. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) Members of the authority may designate members of their respective staffs to attend meetings of the authority and to exercise their right to vote in their absence. Such designations shall be in writing to the chair and filed with the secretary. The governor shall serve as chair of the authority and the comptroller of the treasury shall be the secretary of the authority. The authority may select such other officers as it deems necessary or desirable.

(e) Minutes covering all meetings and actions of the authority shall be prepared by the secretary of the authority and shall be kept on file in the office of the comptroller of the treasury, open to public inspection. Financial and accounting records shall be prepared by the treasurer and shall be kept on file in the office of the treasurer, open to public inspection. All books of accounts and financial records of the authority shall be subject to audit annually by the comptroller of the treasury. With prior approval of the comptroller of the treasury, the audit may be performed by a licensed independent public

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accountant selected by the authority. If an independent public accountant is employed, the audit contract between the authority and the independent accountant shall be on contract forms prescribed by the comptroller of the treasury. The cost of any audit shall be paid by the authority. The comptroller of the treasury shall ensure that audits are prepared in accordance with generally accepted governmental auditing standards and determine if the audits meet minimum audit standards prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until approved by the comptroller of the treasury.

(f) A majority of the members of the authority serving shall constitute a quorum for the transaction of business at a meeting of the authority. Voting upon action taken by the authority shall be conducted by a majority vote of the members present at the meeting of the authority. The authority shall meet at the call of the chair and as may be otherwise provided in any bylaws of the authority.

(g) The authority and its corporate existence shall continue until terminated by law; provided, that no such law, including any law contained in title 4, chapter 29, shall cause the termination of the authority's existence so long as the authority shall have bonds, notes or other obligations outstanding. Upon termination of the existence of the authority, all its rights and properties shall accrue to and be vested in the state.

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(h) The authority may delegate to one (1) or more of its members or its officers such powers and duties as it may deem proper.

4-____-104. Powers and duties of authority.

(a) In addition to the powers granted by any other provisions of this chapter, the authority shall have the powers necessary or convenient to carry out the purposes and provisions of this chapter including, but not limited to, the following express powers:

(1) Sue and be sued, at law or in equity; provided, that jurisdiction over the authority against which an action is brought shall lie solely in any court of competent jurisdiction in Tennessee.

(2) Have a seal and alter the same at pleasure.

(3) Establish policy guidelines for the investment of the authority's assets pursuant to § 4-____-106.

(4) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of the powers and duties of the authority.

(5) Contract for the provision of all or any part of the services, including, but not limited to, legal and other personal and professional services, as may be necessary or convenient for the management and operation of the authority or its assets or for otherwise carrying out its responsibilities under this chapter.

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Notwithstanding any provision of § 8-6-106 or other law to the contrary, the authority may employ legal counsel to advise or otherwise assist the authority in any matter and to pay to any counsel so employed such compensation for services rendered as the authority may deem just and such compensation may be paid out of the assets of the trust fund.

(6) Review and analyze the investment performance of the trust fund.

(7) Establish a withdrawal policy pursuant to § 4-__-108 for the purpose of determining the amount which can be withdrawn from the trust fund and made available for appropriation.

(8) Enter into property sale contracts with the state pursuant to § 4-____-109.

(9) Issue debt obligations pursuant to § 4-__-110 below.

(10) Subject to the rights of debt holders, adopt bylaws governing the conduct of its meetings and the use and application of its moneys and properties and for providing for other matters not inconsistent herewith or otherwise contrary to law.

(b) Any guidelines, policies or bylaws adopted or established pursuant to this section shall be exempt from the provisions of title 4, chapter 5.

4-____-105. Millennium trust fund.

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(a) There is hereby established a separate special trust fund to be known and cited as the "Millennium Trust Fund" for the purpose of receiving and managing all moneys derived by the authority from the sale by the state of its rights to receive damage payments under the master settlement agreement and the issuance of bonds and notes by the authority, including the income and proceeds from the investment of those moneys pursuant to § 4-_____-106. Such moneys shall not be deemed a part of, and shall be accounted for separately from, any other moneys in the state treasury. The authority shall be responsible for managing and investing the trust fund assets in accordance with this chapter.

(b) The assets of the trust fund shall be preserved, invested and expended solely pursuant to and for the purposes of this chapter and shall not be used for any other purpose. The assets of the trust fund shall be expended solely to:

(1) Make withdrawals pursuant to the withdrawal policy established pursuant to § 4-_____-108;

(2) Pay all expenses and fees which the authority may deem necessary, convenient or advantageous in connection with the carrying out of its powers and duties pursuant to this chapter, including, but not limited to, the management and operation of the trust fund, the investment of trust fund assets, and the issuance,

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entering into and administration of the debt and contractual obligations pursuant to § 4-_-110;

(3) Pay debt service on debt authorized by § 4-_-110;

(4) Pay amounts payable under contracts and agreements authorized by § 4-_-110 payable before or upon the termination thereof; and

(5) Pay any other amount authorized or required by the resolution authorizing debt adopted pursuant to § 4-_-110.

(c) Such assets shall be expended in the following order of priority: first, pursuant to or as permitted by the authority's agreements with the holders of its debt authorized by this chapter; second, to pay the authority's operating or other costs and expenses not otherwise provided for; and third, in accordance with the authority's withdrawal policy.

4-____-106. Investments. The authority shall establish an investment policy for the trust fund. The authority may authorize assets of the trust fund to be invested in any or all of the following:

(1) Bonds, notes and treasury bills of the United States or other obligations guaranteed as to principal and interest by the United States or any of its agencies;

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(2) Obligations guaranteed as to principal and interest by the federal home loan mortgage corporation, federal national mortgage association, student loan marketing association and other United States government-sponsored corporations;

(3) Obligations of the United States or its agencies or any United States government sponsored corporation which are not guaranteed as to principal or interest by the respective issuer;

(4) Repurchase agreements for obligations of the United States or its agencies;

(5) Prime commercial paper;

(6) Bonds, debentures, notes or other obligations of any solvent business entity created or existing under the laws of the United States or of any state thereof which at the time of investment are not in default as to principal or interest and have an investment grade rating by any nationally recognized rating service;

(7) Investment contracts of any solvent business entity created or existing under the laws of the United States or of any state which at the time of investment have an investment grade rating by any nationally recognized rating service;

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(8) Bonds, notes or other obligations of the Tennessee consolidated retirement system created pursuant to § 8-34-201, including any investment contracts of such system;

(9) Domestic stock index futures contracts provided such contracts shall not be utilized for purposes of speculative leveraging. For purposes of this subdivision, "speculative leveraging" is defined as buying or selling financial futures where the amount of the contract obligation is an amount greater than the market value of the trust fund's cash and short-term securities;

(10) The state pooled investment fund established pursuant to § 9-4-603 or the intermediate-term investment fund established pursuant to § 9-4-608; and

(11) Obligations issued by or on behalf of any state of the United States, including, but not limited to, the state of Tennessee, and any agency, instrumentality or political subdivision thereof which at the time of investment have an investment grade rating by any nationally recognized rating service.

4-____-107. Delegation to state treasurer for implementation of policy.

(a) Implementation of the investment policy established by the authority is hereby delegated to the state treasurer who shall put such policy into effect. Subject to such policy, the state treasurer shall have full power to invest and reinvest the assets of the authority held in the trust fund.

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(b) The state treasurer shall provide an annual report to the authority showing the investment activities of the trust during the preceding year.

4-_____-108. Withdrawal policy.

(a) The authority shall establish a withdrawal policy for the trust fund. It is the intent of the general assembly that the policy be structured with the goal of maintaining the purchasing power of the trust fund over time. Every four (4) years the authority shall conduct a review of the policy and adopt such amendments to the policy as it deems to be appropriate. By no later than December 1st of each year, the authority shall certify to the governor and to the chairs of the senate and house finance, ways and means committees the amount which can be withdrawn from the trust pursuant to the withdrawal policy and be made available for appropriation in the upcoming fiscal year.

(b) Amounts determined to be available for withdrawal during a particular state fiscal year which are subsequently appropriated for such fiscal year shall be withdrawn from the trust fund as needed to meet expense requirements.

4-_____-109. Sale and purchase of master settlement agreement moneys.

(a) The state funding board may execute a true sale of the state's right to receive all or any portion of the damage payments scheduled to be received by the state under the terms of the master settlement agreement by entering into a property sale contract with the authority. A property sale contract shall represent a transfer by the

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state of the complete and present right of the state to all or any defined portion of such damage payments in exchange for cash and any other valuable consideration specified in the property sale contract and may include representations and covenants by the state regarding the sale of damage payments and the investment and use of cash received by the state pursuant to the terms of the property sale contract. The state funding board may enter into any property sale contract the state funding board believes to be in the best interest of the state without the necessity of complying with any other state law relating to the sale of state property. Execution of any property sale contract by the state funding board shall be deemed a conclusive determination by the state that the cash and any other consideration received by the state pursuant to the terms of the property sale contract is adequate. The state pledges and agrees with the authority and the holders of any debt issued under this chapter, and the authority may include this pledge and agreement of the state in any agreement with any such holders, that upon execution of a property sale contract the state (1) will irrevocably direct the escrow agent under the master settlement agreement to transfer all damage payments directly to the authority or its assignee; (2) will enforce the authority's rights to received damage payments to the full extent permitted under the terms of the master settlement agreement; and (3) will not amend the master settlement agreement in any manner that

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would materially impair the rights of the holders of any debt issued pursuant to Section 4-____-110.

(b) The authority may purchase the state's right to receive damage payments scheduled to be received by the state under the terms of the master settlement agreement from the state funding board by entering into a property sale contract.

4-____-110. Sale of notes and bonds.

(a) (1) Subject to the provisions of this chapter, the authority shall have the power and is hereby authorized from time to time to issue its negotiable debt in such principal amount, as, in the opinion of the authority, shall be necessary to provide sufficient funds for achieving its corporate purposes and powers, including, but not limited to, funding the trust fund with proceeds thereof, to pay interest on debt of the authority, to establish reserves to secure such debt, and to make all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The authority shall have the power, from time to time, to issue bond anticipation notes, renewal notes, bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other purpose.

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(3) Except as may otherwise be expressly provided by the authority, every issue of its debt shall be special limited obligations of the authority payable out of damage payments received or receivable by the authority pursuant to a property sale contract and the master settlement agreement, and other lawfully available moneys of the authority as may be provided by the resolutions authorizing such debt.

(4) Whether or not the debt instruments are of such form and character as to be negotiable instruments under the provisions of the Uniform Commercial Code, compiled in title 47, chapters 1-9, the debt instruments shall be and hereby are made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, compiled in title 47, chapters 1-9, subject only to the provisions of the debt instruments for registration.

(b) (1) The debt shall be authorized by a resolution or resolutions of the authority, shall bear such date or dates, and shall mature at such time or times, as such resolution or resolutions may provide.

(2) Such resolutions shall provide for the security and terms for securing the payment of the debt or of any series thereof and such other terms for the debt as deemed appropriate by the authority.

(3) The debt of the authority may be sold by the authority, at public or private sale, at such price or prices as the authority shall determine.

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(c) Any resolution or resolutions authorizing any debt or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(1) Pledging all or any part of the damage payments received or receivable by the authority pursuant to a property sale contract and the master settlement agreement, and other lawfully available moneys of the authority, to secure the payment of the debt or of any issue thereof, subject to such agreements with holders as may then exist;

(2) Pledging all or any part of the assets of the authority to secure the payment of the debt or of any issue of debt, subject to such agreements with holders as may then exist;

(3) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(4) Limitations on the purpose to which the proceeds of sale of debt may be applied and pledging such proceeds to secure the payment of the debt or of any issue thereof;

(5) Limitations on the issuance of additional debt; the terms upon which additional debt may be issued and secured; the refunding of outstanding or other debt;

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(6) The procedure, if any, by which the terms of any contract with holders may be amended or abrogated, the amount of debt the holders of which must consent thereto, and the manner in which such consent may be given;

(7) Limitations on the amount of moneys to be expended by the authority for operating, administrative or other expenses of the authority;

(8) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, or limiting the rights, powers and duties of such trustee; or

(9) Any other matters, of like or different character, which in any way affect the security, marketability or protection of the notes or bonds, including, but not limited to, provisions related to credit or liquidity enhancement or insurance and the reimbursement of providers thereof.

(d) (1) It is the intention hereof that any pledge made by the authority shall be valid and binding from the time when the pledge is made; that the moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof.

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(2) Neither the resolution nor any other instrument by which a pledge is created need be recorded to perfect the lien of such pledge and with the priority as provided in such resolution or other instrument.

(e) Neither the members of the authority nor any person executing the debt shall be liable personally on the debt or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The state shall not be liable on notes or bonds of the authority and such notes and bonds shall not be a debt of the state, and such notes and bonds shall contain a statement to such effect.

(g) (1) The state does hereby pledge to and agree with the authority and the holders of any debt issued under this chapter, that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such debt, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

(2) The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such debt.

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(h) The authority may enter into an agreement to deliver its debt issued under this part at such time after the sale thereof as determined by the authority.

(i) With respect to all or any portion of any issue of bonds issued hereunder, the authority may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and agreements as the authority may determine, including, without limitation, provisions permitting the authority to pay to or receive from any person or entity any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(j) When entering into any contracts or agreements facilitating the issuance and sale of bonds in a transaction bearing a reasonable relationship to this state and also to another state or nation, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, and agreements with the purchaser of the bonds authorized under this section, the authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation.

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(k) Such debt may be issued without any other proceedings or the happening of any other conditions or things than the proceedings, conditions and things that are specified and required by this chapter.

4-____-111. Debt legal investments. All public officers and bodies of the state, municipal corporations, political subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, all executors, administrators, guardians, trustees, and all other fiduciaries in the state may legally invest funds within their control in the debt of the authority.

4-____-112. Debt tax exempt. All obligations issued under this chapter shall be exempt from taxation by the state, or by any county, municipality or taxing district of the state, except inheritance, transfer and estate taxes.

4-____-113. Limitation of rights to recover. Notwithstanding any provision of the law to the contrary, no county, municipality, metropolitan government or other instrumentality of the state of Tennessee shall have the right to recover any amounts paid to the state under the master settlement agreement.

4-____-114. No action maintainable. An action or proceeding at law or in equity to review any acts or proceedings (including, but not limited to, any property sale contract) or to question the validity or enjoin the performance of any act or proceedings or the issuance of any debt obligations or for any other relief against or from any acts or

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proceedings done under this chapter, whether based upon irregularities or jurisdictional defects or for any other reason, shall not be maintained unless commenced within thirty (30) days after the performance of the act or proceedings or the effective date thereof, or in the case of or affecting debt obligations, prior to the issuance thereof, whichever occurs first, and is thereafter perpetually barred.

4-____-115. No bankruptcy. Prior to the date which is one year and five days after which the authority no longer has any debt outstanding, the authority shall have no authority to file a voluntary petition under chapter 9 of the federal bankruptcy code or such corresponding chapter or sections as may, from time to time, be in effect, and neither any public officer nor any organization, entity or other person shall authorize the authority to be or become a debtor under chapter 9 or any successor or corresponding chapter or sections during such period. The state hereby covenants with the authority's debt holders that the state will not limit or alter the denial of authority under this section during the period referred to in the preceding sentence.

4-____-116. Construction and effect. This chapter and all powers granted hereby shall be liberally construed to effectuate its intent and their purposes, without implied limitations thereon. This chapter shall constitute full and complete authority for all things herein contemplated to be done. All rights and powers herein granted shall be cumulative with those derived from other sources and shall not, except as expressly

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stated herein, be construed in limitation thereof. Insofar as the provisions of this chapter are inconsistent with the provisions of any other act, general or special, or statute, the provisions of this chapter shall be controlling.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.